

AMENDED IN SENATE SEPTEMBER 3, 2015

AMENDED IN SENATE AUGUST 17, 2015

AMENDED IN SENATE JULY 1, 2015

AMENDED IN ASSEMBLY MAY 5, 2015

AMENDED IN ASSEMBLY MARCH 19, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 449

Introduced by Assembly Member Irwin

(Principal coauthor: Assembly Member Wilk)

(Principal coauthors: Senators Hertzberg and Pavley)

**(Coauthors: Assembly Members Baker, Brown, Chávez,
Cristina Garcia, Jones, Maienschein, Steinorth, and Waldron)**

(Coauthors: Senators Allen, Anderson, and Vidak)

February 23, 2015

An act to add ~~Sections 17140.4 and~~ *Section 23711.4* to the Revenue and Taxation Code, and to add ~~Chapter 15 (commencing with Section 4875) to Division 4.5 of Sections 4877, 4878, 4880, 4882, and 4884 to~~ the Welfare and Institutions Code, relating to taxation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 449, as amended, Irwin. Income taxation: savings plans: Qualified ABLE Program.

The Personal Income Tax Law and the Corporation Tax Law, in specified conformity with federal income tax laws regarding qualified tuition programs, provide that distributions from a qualified tuition

program are generally not included in the income of the donor or the beneficiary, as specified.

Existing federal law, the Stephen Beck Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act), for taxable years beginning on or after January 1, 2015, encourages and assists individuals and families to save private funds for the purpose of supporting persons with disabilities to maintain their health, independence, and quality of life by excluding from gross income distributions used for qualified disability expenses by a beneficiary of a Qualified ABLE Program established and maintained by a state, as specified.

This bill would, for taxable years beginning on or after January 1, 2016, conform to these federal income tax law provisions relating to the ABLE Act under ~~the Personal Income Tax Law and the Corporation Tax Law~~, as provided. The bill would also establish in state government the ABLE program trust for purposes of implementing the federal ABLE Act. The bill would ~~create~~ *authorize* the ABLE Act Board ~~and would authorize the board~~ to adopt regulations to implement the program. The bill would create the program fund, a continuously appropriated fund, thereby making an appropriation, and the administrative fund, as specified. The bill would require the ~~Board~~ *board* to administer the program in compliance with the requirements of the federal ABLE Act.

This bill would become operative only if SB 324 is enacted and takes effect on or before January 1, 2016.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature to further the
- 2 purposes of the federal Stephen Beck Jr., Achieving a Better Life
- 3 Experience Act to ensure that people with disabilities may save
- 4 for the future to achieve greater independence.
- 5 SEC. 2. This act shall be known, and may be cited, as the
- 6 California Achieving a Better Life Experience Act.
- 7 ~~SEC. 3. Section 17140.4 is added to the Revenue and Taxation~~
- 8 ~~Code, to read:~~
- 9 ~~17140.4. For taxable years beginning on or after January 1,~~
- 10 ~~2016, Section 529A of the Internal Revenue Code, relating to~~
- 11 ~~qualified ABLE programs, added by Section 102 of Division B of~~
- 12 ~~Public Law 113-295, shall apply, except as otherwise provided.~~

1 ~~(a) Section 529A of the Internal Revenue Code is modified as~~
2 ~~follows:~~

3 ~~(1) By substituting the phrase “under this part and Part 11~~
4 ~~(commencing with Section 23001)” in lieu of the phrase “under~~
5 ~~this subtitle.”~~

6 ~~(2) By substituting “Article 2 (commencing with Section~~
7 ~~23731)” in lieu of “Section 511.”~~

8 ~~(b) A copy of the report required to be filed with the Secretary~~
9 ~~of the Treasury under Section 529A(d) of the Internal Revenue~~
10 ~~Code, relating to reports, shall be filed with the Franchise Tax~~
11 ~~Board at the same time and in the same manner as specified in that~~
12 ~~section.~~

13 ~~SEC. 4.~~

14 ~~SEC. 3.~~ Section 23711.4 is added to the Revenue and Taxation
15 Code, to read:

16 23711.4. For taxable years beginning on or after January 1,
17 2016, Section 529A of the Internal Revenue Code, relating to
18 qualified ABLE programs, added by Section 102 of Division B of
19 Public Law 113-295, shall apply, except as otherwise provided.

20 ~~(a) Section 529A~~ 529A(a) of the Internal Revenue Code is
21 modified as follows:

22 ~~(1) By substituting the phrase “under Part 10 (commencing with~~
23 ~~Section 17001) and this part” in lieu of the phrase “under this~~
24 ~~subtitle.”~~

25 ~~(2) By substituting “Article 2 (commencing with Section~~
26 ~~23731)” in lieu of “Section 511.”~~

27 ~~(b) Section 529A(c)(3)(A) of the Internal Revenue Code is~~
28 ~~modified by substituting “2.5 percent” in lieu of “10 percent.”~~

29 ~~(b)~~

30 ~~(c) A copy of the report required to be filed with the Secretary~~
31 ~~of the Treasury under Section 529A(d) of the Internal revenue~~
32 ~~Code, relating to reports shall be filed with the Franchise Tax~~
33 ~~Board at the same time and in the same manner as specified in that~~
34 ~~section.~~

35 ~~SEC. 5.~~ Chapter 15 (commencing with Section 4875) is added
36 ~~to Division 4.5 of the Welfare and Institutions Code, to read:~~

37
38 CHAPTER 15. QUALIFIED ABLE PROGRAM

39
40 4875. For purposes of this chapter:

1 (a) ~~“ABLE account” or “account” means the account established~~
2 ~~and owned by a designated beneficiary pursuant to this chapter~~
3 ~~for the purpose of meeting the qualified disability expenses of the~~
4 ~~designated beneficiary of the account.~~

5 (b) ~~“Administrative fund” means the fund used to administer~~
6 ~~this chapter.~~

7 (c) ~~“Board” means the California ABLE Act Board established~~
8 ~~under this chapter.~~

9 (d) ~~“California ABLE Program Trust” or “ABLE program trust”~~
10 ~~means the trust created pursuant to this chapter.~~

11 (e) ~~“Designated beneficiary” means the eligible individual who~~
12 ~~established an ABLE account and is the owner of the account.~~

13 (f) ~~“Eligible individual” means an individual who is eligible~~
14 ~~under the program for a taxable year if during that taxable year~~
15 ~~both of the following criteria are met:~~

16 (1) ~~The individual is entitled to benefits based on blindness or~~
17 ~~disability under Title II or XVI of the federal Social Security Act,~~
18 ~~and that blindness or disability occurred before the date on which~~
19 ~~the individual attained 26 years of age.~~

20 (2) ~~A disability certification, as defined in the federal ABLE~~
21 ~~Act, with respect to the individual is filed pursuant to the~~
22 ~~requirements set forth in the federal ABLE Act.~~

23 (g) ~~“Federal ABLE Act” means the federal Stephen Beek Jr.,~~
24 ~~Achieving a Better Life Experience Act of 2014.~~

25 (h) ~~“Investment management” means the functions performed~~
26 ~~by a manager contracted to perform functions delegated by the~~
27 ~~board.~~

28 (i) ~~“Investment manager” means a manager contracted to~~
29 ~~perform functions delegated by the board.~~

30 (j) ~~“Program fund” means the program fund established by this~~
31 ~~chapter, which shall be held as a separate fund within the California~~
32 ~~ABLE Program Trust.~~

33 (k) ~~“Qualified ABLE Program” or “program” means the program~~
34 ~~established by this chapter to implement the federal ABLE Act~~
35 ~~pursuant to Section 529A of the Internal Revenue Code.~~

36 (l) ~~“Qualified disability expenses” means any expenses related~~
37 ~~to the eligible individual’s blindness or disability that are made~~
38 ~~for the benefit of an eligible individual who is the designated~~
39 ~~beneficiary, including expenses related to education, housing,~~
40 ~~transportation, employment training and support, assistive~~

1 technology and personal support services, health, prevention and
2 wellness, financial management and administrative services, legal
3 fees, expenses for oversight and monitoring, funeral and burial
4 expenses, and other expenses, which are approved by the Secretary
5 of the Treasury under regulations and consistent with the purposes
6 of the federal ABLE Act.

7 ~~4876. There is hereby created the California ABLE Act Board~~
8 ~~that consists of the Treasurer, the Director of Finance, the~~
9 ~~Controller, the Director of Developmental Services, the chairperson~~
10 ~~of the State Council on Developmental Disabilities, the Director~~
11 ~~of Rehabilitation, and the Chair of the State Independent Living~~
12 ~~Council, or their designees. The Treasurer shall serve as chair of~~
13 ~~the board.~~

14 *SEC. 4. Section 4877 is added to the Welfare and Institutions*
15 *Code, to read:*

16 4877. (a) There is hereby created an instrumentality of the
17 State of California to be known as the California ABLE Program
18 Trust.

19 (b) The purposes, powers, and duties of the California ABLE
20 Program Trust are vested in, and shall be exercised by, the board.

21 (c) The board, in the capacity of trustee, shall have the power
22 and authority to do all of the following:

23 (1) Sue and be sued.

24 (2) Make and enter into contracts necessary for the
25 administration of the ABLE program trust, and engage personnel,
26 including consultants, actuaries, managers, counsel, and auditors,
27 as necessary for the purpose of rendering professional, managerial,
28 and technical assistance and advice.

29 (3) Adopt a corporate seal and change and amend it from time
30 to time.

31 (4) Cause moneys in the program fund to be held and invested
32 and reinvested.

33 (5) Accept any grants, gifts, appropriations, and other moneys
34 from any unit of federal, state, or local government or any other
35 person, firm, partnership, or corporation for deposit to the
36 administrative fund or the program fund. ~~The board may not accept~~
37 ~~any contribution by any nonpublic entity, person, firm, partnership,~~
38 ~~or corporation that is not designated for a specified designated~~
39 ~~beneficiary.~~

1 (6) Enter into agreements with designated beneficiaries or
2 eligible individuals to establish and maintain an ABLE account.

3 (7) Make provisions for the payment of costs of administration
4 and operation of the ABLE program trust.

5 (8) Carry out the duties and obligations of the ABLE program
6 trust pursuant to this chapter and the federal ABLE Act pursuant
7 to Section 529A of the Internal Revenue Code and federal
8 regulations issued pursuant to that code, and have any other powers
9 as may be reasonably necessary for the effectuation of the purposes,
10 objectives, and provisions of this chapter.

11 (9) Carry out studies and projections in order to advise
12 designated beneficiaries or eligible individuals regarding present
13 and estimated future qualified disability expenses and the levels
14 of financial participation in the ABLE program trust required in
15 order to assist designated beneficiaries or eligible individuals.

16 (10) Participate in any other way in any federal, state, or local
17 governmental program for the benefit of the ABLE program trust.

18 (11) Promulgate, impose, and collect administrative fees and
19 charges in connection with transactions of the ABLE program
20 trust, and provide for reasonable service charges, including
21 penalties for cancellations.

22 (12) Set minimum and maximum investment levels.

23 (13) Administer the funds of the ABLE program trust.

24 (14) Procure insurance against any loss in connection with the
25 property, assets, or activities of the ABLE program trust.

26 (15) Procure insurance indemnifying any member of the board
27 from personal loss or liability resulting from a member's action
28 or inaction as a member of the board.

29 (d) The Treasurer shall, on behalf of the board, appoint an
30 executive director, who shall not be a member of the board and
31 who shall serve at the pleasure of the board. The Treasurer shall
32 determine the duties of the executive director and other staff as
33 necessary and set his or her compensation. The board may authorize
34 the executive director to enter into contracts on behalf of the board
35 or conduct any business necessary for the efficient operation of
36 the board.

37 ~~4878.—~~

38 *SEC. 5. Section 4878 is added to the Welfare and Institutions*
39 *Code, to read:*

1 4878. (a) The board shall segregate moneys received by the
2 ABLE program trust into two funds, which shall be identified as
3 the program fund and the administrative fund.

4 (1) Notwithstanding Section 13340 of the Government Code,
5 the program fund is hereby continuously appropriated, without
6 regard to fiscal years, to the ABLE Act Board for the purposes
7 specified in this act.

8 (2) The moneys in the administrative fund shall be available for
9 the ABLE Act Board, upon appropriation, for administration of
10 the act. Administrative costs shall not exceed 3 percent of the
11 incoming funds for each fiscal year for the first five fiscal years
12 following the opening of the first ABLE Act account. After the
13 five-year period, administrative costs shall not exceed 1 percent
14 of the incoming funds for each fiscal year.

15 (3) Funding for startup and administrative costs for the board
16 shall be provided in the form of a loan from the General Fund
17 sufficient to cover the board's projected administrative costs for
18 its first two years of implementing the program. Once the loan has
19 been expended and revenues from the program are sufficient to
20 cover the board's ongoing costs, the board shall repay, within five
21 years, the amount loaned, plus interest calculated at the rate earned
22 by the Pooled Money Investment Account.

23 (b) Not later than 30 days after the close of each month, the
24 investment manager shall place on file for public inspection during
25 business hours a report with respect to investment performance.
26 The investment manager shall report the following information,
27 to the extent applicable, to the board within 30 days following the
28 end of each month:

29 (1) The type of investment, name of the issuer, date of maturity,
30 and the par and dollar amount invested in each security, investment,
31 and money within the program fund.

32 (2) The weighted average maturity of the investments within
33 the program fund.

34 (3) Any amounts in the program fund that are under the
35 management of an investment manager.

36 (4) The market value as of the date of the report and the source
37 of this valuation for any security within the program fund.

38 (5) A description of the compliance with the statement of
39 investment policy.

1 (c) Moneys in the program fund may be invested or reinvested
2 by the Treasurer or may be invested in whole or in part under
3 contract with an investment manager, as determined by the board.

4 (d) The board shall annually prepare and adopt a written
5 statement of investment policy. The board shall consider the
6 statement of investment policy and any changes in the investment
7 policy at a public hearing. The board shall approve the investment
8 management entity or entities consistent with subdivision (c).

9 (e) Transfers may be made from the program fund to the
10 administrative fund for the purpose of paying operating costs
11 associated with administering the ABLE program trust and as
12 required by this chapter. All costs of administration of the ABLE
13 program trust shall be paid out of the administrative fund.

14 (f) All moneys paid by designated beneficiaries or eligible
15 individuals in connection with ABLE accounts shall be deposited
16 as received into the program fund, and shall be promptly invested
17 and accounted for separately. Deposits and interest thereon
18 accumulated on behalf of designated beneficiaries in the program
19 fund of the ABLE program trust may be used for qualified
20 disability expenses.

21 (g) The board shall maintain separate accounting for each
22 designated beneficiary.

23 (h) Any designated beneficiary may, directly or indirectly, direct
24 the investment of any contributions to his or her ABLE account,
25 or any earnings thereon, no more than two times in any calendar
26 year.

27 (i) The assets of the trust, including the program fund, shall at
28 all times be preserved, invested, and expended solely and only for
29 the purposes of the trust and shall be held in trust for the designated
30 beneficiaries and no property rights therein shall exist in favor of
31 the state. The assets shall not be transferred or used by the state
32 for any purposes other than the purposes of the trust and consistent
33 with the provisions of the federal ABLE Act.

34 ~~4879. (a) Under the program, a person may make contributions~~
35 ~~for a taxable year, for the benefit of an individual who is an eligible~~
36 ~~individual for that taxable year, to an ABLE account that is~~
37 ~~established for the purpose of meeting the qualified disability~~
38 ~~expenses of the designated beneficiary of the account if both of~~
39 ~~the following criteria are met:~~

1 ~~(1) The designated beneficiary is limited to one ABLE account~~
2 ~~for purposes of this chapter.~~

3 ~~(2) The ABLE account is established only for a designated~~
4 ~~beneficiary who is a resident of this state.~~

5 ~~(b) A contribution to any ABLE account may only be accepted~~
6 ~~if one of the following conditions is met:~~

7 ~~(1) The contribution is in cash.~~

8 ~~(2) Except in the case of contributions under Section~~
9 ~~529A(c)(1)(C) of the Internal Revenue Code, if the contribution~~
10 ~~to an ABLE account would not result in aggregate contributions~~
11 ~~from all contributors to the ABLE account for the taxable year~~
12 ~~exceeding the amount in effect under Section 2503(b) of the~~
13 ~~Internal Revenue Code for the calendar year in which the taxable~~
14 ~~year begins.~~

15 ~~(c) The designated beneficiary shall retain ownership of all~~
16 ~~contributions made to the designated beneficiary's ABLE account~~
17 ~~to the date of utilization for qualified disability expenses, and all~~
18 ~~interest derived from the investment of the contributions to the~~
19 ~~designated beneficiary's ABLE account shall be deemed to be held~~
20 ~~in the ABLE program trust for the benefit of the designated~~
21 ~~beneficiary. Neither the contributions, nor any interest derived~~
22 ~~therefrom, may be pledged as collateral for any loan.~~

23 ~~(d) The board shall develop adequate safeguards to prevent~~
24 ~~aggregate contributions on behalf of a designated beneficiary in~~
25 ~~excess of the maximum contribution limits necessary to provide~~
26 ~~for the qualified disability expenses of the designated beneficiary.~~
27 ~~For purposes of this subdivision, aggregate contributions include~~
28 ~~contributions under any prior qualified ABLE program of any state~~
29 ~~or agency or instrumentality thereof.~~

30 ~~4880.—~~

31 ~~SEC. 6. Section 4880 is added to the Welfare and Institutions~~
32 ~~Code, to read:~~

33 ~~4880. Notwithstanding any other law, moneys in, contributions~~
34 ~~to, and any distribution for qualified disability expenses from, an~~
35 ~~ABLE account, not to exceed one hundred thousand dollars~~
36 ~~(\$100,000), shall not count toward determining eligibility for a~~
37 ~~state or local means-tested program.~~

38 ~~4881.—(a) The board shall provide an annual listing of~~
39 ~~distributions to individuals with respect to an interest in an ABLE~~
40 ~~account to the Franchise Tax Board at a time and in a manner and~~

1 ~~form as specified by the Franchise Tax Board. The taxpayers'~~
2 ~~identification numbers obtained in connection with an ABLE~~
3 ~~account shall be used exclusively for state and federal tax~~
4 ~~administration purposes.~~

5 ~~(b) The board shall make a report to the appropriate individual~~
6 ~~of any distribution to any individual with respect to an interest in~~
7 ~~an ABLE account, at a time and in a form and manner as required~~
8 ~~by the Franchise Tax Board.~~

9 ~~(c) The board shall report annually to each designated~~
10 ~~beneficiary all of the following:~~

11 ~~(1) The value of the designated beneficiary's account.~~

12 ~~(2) The interest earned thereon.~~

13 ~~(3) The rate of return of the investments in the designated~~
14 ~~beneficiary's account for that reporting period.~~

15 ~~(4) Information on investments and qualified disability expenses~~
16 ~~that designated beneficiaries can use to set savings goals and~~
17 ~~contribution amounts.~~

18 ~~(d) The board shall provide a means for designated beneficiaries~~
19 ~~to express concerns or comments regarding the ABLE program~~
20 ~~trust and any information required to be reported by this section.~~

21 ~~4882.—~~

22 *SEC. 7. Section 4882 is added to the Welfare and Institutions*
23 *Code, to read:*

24 4882. (a) The board shall adopt regulations as it deems
25 necessary to implement this chapter consistent with the federal
26 Internal Revenue Code and regulations issued pursuant to that
27 code to ensure that this program meets all criteria for federal
28 tax-exempt benefits.

29 (b) The board may adopt regulations to implement this chapter
30 as emergency regulations in accordance with the rulemaking
31 provisions of the Administrative Procedure Act (Chapter 3.5
32 (commencing with Section 11340) of Part 1 of Division 3 of Title
33 2 of the Government Code). The adoption of the regulations shall
34 be deemed to be an emergency and necessary for the immediate
35 preservation of the public peace, health and safety, or general
36 welfare.

37 ~~4883. This act shall be construed liberally in order to effectuate~~
38 ~~its legislative intent. The purposes of this act and all of its~~
39 ~~provisions with respect to powers granted shall be broadly~~

1 ~~interpreted to effectuate the intent and purposes of the federal~~
2 ~~ABLE Act and not as a limitation of those powers.~~

3 ~~4884.—~~

4 *SEC. 8. Section 4884 is added to the Welfare and Institutions*
5 *Code, to read:*

6 *4884. The board shall market this program to residents of the*
7 *State of California to the extent funds are available to do so.*

8 *SEC. 9. This act shall become operative only if Senate Bill 324*
9 *of the 2015–16 Regular Session is enacted and takes effect on or*
10 *before January 1, 2016.*

O